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**NOTE**

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From:	Presidency
To:	Delegations
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Subject:	The way forward in the field of mutual recognition in criminal matters - Exchange of views on the basis of a note by the Presidency

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Delegations will find in the Annex observations by the Presidency following the replies by Member States to the questions set out in the note on '*The way forward in the field of mutual recognition*' (6286/19) (the replies are set out in WK 2948/2019).

The observations contain questions for reflection, which will be discussed at the meeting of the Friends of the Presidency scheduled to take place on Monday 18 March 2019.

**Observations by the Presidency following the replies by Member States to the questions set out in the note on '*The way forward in the field of mutual recognition*' (6286/19)**

**Introduction**

The document prepared by the Presidency entitled *The way forward in the field of mutual recognition* (6286/19) focused on four different pillars: a) grounds for non-recognition in the application of mutual recognition instruments, b) training, c) possible gaps in the application of mutual recognition instruments, and d) enhancing the institutional framework.

The idea behind the questions raised was to have a cross-cutting view on matters related to the application of mutual recognition and concerning the issue of mutual trust. The matters raised have already been approached in different contexts and formats, but the purpose of the questions posed by the Presidency was to bring the information together and gather an updated and comprehensive view.

Discussing these issues in COPEN format is in no way a duplication of the efforts that are currently being undertaken in the context of the ninth round of mutual evaluations, but rather a complementary process, with the aim of drafting a Presidency report for the JHA Council in June based on input from the Member States. It follows up on the Council conclusions adopted in December 2018<sup>1</sup>.

Based on the responses kindly provided so far by the delegations, the Presidency would like to raise the following discussion points:

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<sup>1</sup> OJ C 449, 13.12.2019, p. 6.

## 1. Grounds for non-recognition

The majority of the delegations mentioned that only a few grounds for non-recognition are applied in practice. Some delegations required more clarity concerning minimum procedural standards for *in-absentia* judgments.

As regards issues concerning fundamental rights, it seems that in the case of the European Investigation Order (EIO), grounds for non-recognition have not yet been applied, or are not known to have been applied.

The matter of prison conditions in the context of the application of the European Arrest Warrant (EAW) has been raised by many delegations. The answers provided showed that further guidance is awaited from the Court of Justice of the European Union (CJEU), notably in the judgment *Dorobantu* (C-128/18), still pending. Some Member States believe that it clearly results from the *Aranyosi* judgment that the assessment of prison conditions should only be made exceptionally, whereas the opinion according to which the presumption of general deficiencies must result in regular enquiries was also expressed.

**Questions: What could be the way forward as regards the application of grounds for non-recognition to the issue of prison conditions? Is there a need for clear common standards/common working methodology concerning information requests on the basis of Article 15 of Framework Decision 2002/584/JHA (e.g. on the criteria which need to be assessed by the executing State, on the sources of information on which the risk assessment could be based, on the issues to which the guarantees should relate, etc.)? What about a comparative analysis of the criteria taken into account by practitioners in this area?**

## 2. Training

Under this point, the Presidency asked the delegations to express their views on whether there are any ways of improving the training activities and materials.

Most of the respondents believed there are ways of improving both domestic and EU training and offered examples of training materials that they found useful for their practitioners, besides the handbooks mentioned by the Presidency (for example one delegation mentioned the document prepared by Eurojust which contains an overview of the case-law of the CJEU). Some delegations mentioned the need for a specific focus on the case-law of the CJEU. Others considered that the training activities are already sufficient and that the handbooks should be kept updated.

**Questions: What could be the way forward as regards training? How could national and Union efforts in this area be better coordinated in order to achieve better results and raise the practitioners' awareness of training seminars and activities (e.g. exchange of best practices; training designed to different needs of practitioners ensuring sufficient practicality, etc.)? Should national training mirror the training at Union level or would a complementary approach be better? Are the training materials produced at Union level (i.e., by the European Judicial Training Network) (EJTN) translated, adapted to the national context and embedded in the national training curricula of your Member State? Are the training activities organised at Union level (by EJTN, i.e.) rolled out at national level in your Member State?**

### 3. Identification of gaps

As regards the scarce use of application of Framework Decision 2008/947/JHA (Probation) and Framework Decision 2009/829/JHA (Supervision), the majority of the delegations observed that this issue will be examined during the ninth round of mutual evaluations and that it would therefore not be the right moment to discuss it.

In the light of this, the Presidency would primarily like to discuss the matter referred to under point 2): measures to ensure that the risk of impunity is reduced in cases of a refusal to execute an EAW.

Only a few delegations considered that a Union instrument on transfer of proceedings would be a good idea – some delegations mentioned the unsuccessful efforts that have been made in this area in 2009. It was observed that the issuing States should solve their matters internally and comply with CJEU standards on prison conditions; on the other hand, it was stated that avoiding impunity should be a responsibility for the executing State.

The Presidency would like to underline that its question on the transfer of proceedings was raised not merely in relation to the EAW, but in the light of increased cases at Union level where an instrument on the transfer of proceedings could be a solution for avoiding impunity, given that the number of EU countries that are parties to the *Council of Europe Convention on the Transfer of Proceedings* is still low.

In respect of the issue of potential legislative developments in the field of procedural rights, the majority of the delegations were of the opinion that the correct and uniform application of existing instruments is preferable.

**Questions: Which legal solutions are available under your national law for avoiding impunity in cases of EAWs being refused based on prison conditions and when the conditions for issuing a certificate based on FD 2008/909/JHA are not fulfilled?**

**Is there a need to further explore a possible Union legal instrument on the transfer of proceedings, including at the level of the practitioners from the EU Member States?**

#### **4. Enhancing the institutional framework**

The idea behind the questions under this point was to see if the delegations would like to see Eurojust and the European Judicial Network (EJN) take a more active role in issues related to cooperation in criminal matters discussed under COPEN.

The vital role already played by Eurojust and the EJN in case-work has been confirmed by the delegations. Some expressed concerns about the budgetary cuts that would affect Eurojust's – and hence EJN's – performance.

Moreover, the COPEN Working Party is generally seen as a good platform for exchanging opinions and best practices and also for discussing the practical application of European Union mutual recognition instruments.

Taking into account the answers received from the delegations, the aim of the Presidency is to ask the Member States whether they would like to see both the EJN and Eurojust become more actively involved in COPEN activities and whether it would be recommendable to provide reciprocal information about discussion topics.

**Questions: In your view, should Eurojust and the EJN become more involved in the work of the COPEN Working Group (including with practitioner's input to some aspects of the legislative process, where necessary), or should the current practice, where they participate on the basis of individual invitations from the Presidency be maintained? Should COPEN general meetings be organised more frequently than once per presidency?**